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In re Application of :
Saito, et al. : ON PETITION OFFICE OF PETITIONS
Application No. 10/827,323 :
Received April 20, 2004 :
Docket No.: 113539.01 :

This is a decision on the "PETITION UNDER 37 CFR § 1.53(e)(2) - THE APPLICATION WAS COMPLETE AS FILED ON OCTOBER 14, 2003," filed August 30, 2004, wherein petitioners request withdrawal of the Notice of Omitted Items; acknowledgement that Fig. 18 was received on April 20, 2004; and a filing date of April 20, 2004 with Figure 18 as part of the original disclosure.

The petition is **DISMISSED**.

The application was received by the USPTO on April 20, 2004. On June 30, 2004, a Notice to File Missing Parts of Nonprovisional Application ("Notice") was mailed indicating, *inter alia*, that the application had been accorded a filing date but that figure 18 appeared to have been omitted from the application as filed.

The Notice permitted applicant to either: (1) promptly establish prior receipt in the PTO of the omitted items at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the items in question were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted items and accept the date of such submission as the application filing date must file any omitted items with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such items and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the Notice (37 CFR 1.181(f)).

Petitioners argue that the application as filed included figures 1-22 and has included as proof of mailing and proof of receipt a copy of an acknowledgement of receipt and postcard indicating that figures 1-22 were received in the Office.

The argument and evidence submitted by petitioners has been considered, but are not persuasive. The USPTO file is the official record of the papers originally filed in this application. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence.

Review of the official application reveals that, as indicated on the return postcard and acknowledgement of receipt, the Office did in fact receive twenty (20) sheets of drawings. Figure 18, however, does not appear on any of the drawing sheets received. Figures 1-13, 16-17, and 19-22 appear singly on separate drawing sheets (nineteen total drawing sheets). Figures 14(a), 14(b), and 15 appear on one single drawing sheet (one total drawing sheet). Hence, the Office received a total of twenty (20) sheets of drawings. Figure 18, however, was omitted.

Thus, the postcard and acknowledgement of receipt do not serve as prima facie evidence of receipt of Figure 18.

As the relief requested by petition has been dismissed, petitioners are advised that the instant application is being returned to the Office of Initial Patent Examination with a filing date of April 20, 2004 without entry of Fig. 18 as part of the disclosure. Petitioners are advised to promptly submit a preliminary amendment canceling reference to Fig. 18 prior to the issuance of the first Office action on the merits.

Any petition for reconsideration of this decision must be submitted within **TWO (2) MONTHS** of the mail date of this decision. If petitioners desire to have Fig. 18 entered into the record, a petitioner for reconsideration requesting the later filing date of August 30, 2004 (date of submission of Fig. 18) and entry of Fig. 18 must be submitted within **TWO (2) MONTHS** of the mail date of this decision. The time period for requesting reconsideration may not be extended pursuant to 37 CFR 1.136. (37 CFR 1.181(f))

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition

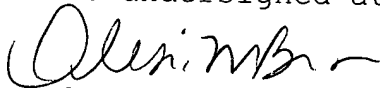
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This application file is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of April 20, 2004 without entry of Fig. 18.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3205.



Alesia M. Brown
Senior Petitions Attorney
Office of Petitions